



HEALTH SYSTEM LAW AND POLICY
CASES AND MATERIALS
VOLUME 2

Colleen M. Flood

2001-2002

Faculty of Law
University of Toronto

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HEALTH SYSTEM LAW AND POLICY

[LAW 404HF]

2001/2002

Wednesday: 4:00-5:50 pm

COURSE OUTLINE

Sept. 5th

INTRODUCTION

- Expectations regarding seminar participation
- Paper selection and writing
- Handout of possible paper topics
- Discussion of an interdisciplinary approach to policy analysis: law, economics, and political science
- Overview of the course

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| Basic Information..... | x |
| Research Tools..... | xi-xxi |

VOLUME ONE

Sept. 12th **Chapter One**

THE CASE FOR GOVERNMENT INTERVENTION IN HEALTH CARE: MARKET FAILURE AND DISTRIBUTIVE JUSTICE

| | |
|--|----------|
| C. M. Flood, "Chapter 2: Arguments in Economics and Justice for Government Intervention in Health Insurance and Health Service Markets" in C. M. Flood, <i>International Health Care Reform: A Legal, Economic and Political Analysis</i> (Routledge: London, 2000)..... | I, 1-21 |
| T. Menzel, "Equality, Autonomy and Efficiency: What Health Care System Should We Have?" (1992) 17: 1 The Jnl. of Med. & Philosophy 33. | I, 21-38 |
| Allen E. Buchanan, The Right to a Decent Minimum Of Health Care, 13 Phil. & Pub. Aff. 55 (1984)..... | I, 39-51 |

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R. Korobkin, "Symposium: Determining Health Care Rights from Behind a Veil of Ignorance" (1998) U. Ill. L. Rev. 801.

J. Dougherty, "An Axiology for National Health Insurance" (1992) 20: 1-2 Law, Medicine, & Health Care 82.

T. Rice, "Can Markets Give Us The Health System We Want?" (1997) 22(2) Jnl. of Health Politics, Policy and Law 383.

N. Barr, "Economic Theory and the Welfare State: A Survey and Interpretation" (1992) XXX J. Econ. Lit. 741, at Part VI. "Assessment 2: Medical Care".

S. Rathgeb Smith and M. Lipsky, "Privatization in Health and Human Services: A Critique" (1992) 17 (2) Jnl. of Health Politics, Policy and Law 233.

R. G. Evans, "Going for the Gold: The Redistributive Agenda Behind Market-Based Health Care Reform" (1997) 22 (2) Jnl. of Health Politics, Policy and Law 427

Sept. 19th **Chapter Two**

RATIONING HEALTH CARE: BALANCING THE NEEDS OF THE MAJORITY WITH THE NEEDS OF MINORITY GROUPS

D. Callahan, "What is a Reasonable Demand on Health Care Resources: Designing a Basic Package of Benefits" (1992) 8 The Jnl. of Contemporary Health Law 1.II, 1-15

Jacobs, Marmor and Oberlander, "The Oregon Health Plan and the Political Paradox of Rationing"(1999) 24: 1 Jnl of Health Politics Policy and Law 161.....II, 16-27

R v. Cambridge District Health Authority ex parte B.
[1995] 1 FLR 1055..... II, 28-36

Chaoulli c. Quebec (Procureure generale)
[2000] J.Q. No. 470 (QL) (C.S.Q.)
(Summary – Translated from French).....II, 37-41

Supplementary Reading

Shortland v. Northland Health Ltd [1998] 1 NZLR 433
C. J. Halligan, "'Just What The Doctor Ordered':

Oregon's Medicaid Rationing Process and Public Participation In Risk Regulation" (1995) 83 Georgetown Law Journal 2697

Sept. 26th **Chapter Three**

AN OVERVIEW OF THE CANADIAN HEALTH CARE SYSTEM: DO WE NEED MORE THAN JUST MORE MONEY?

The *Canada Health Act*, S.C. 1984, c. 6.....III, 1-14

C. M. Flood, "The Structure and Dynamics of Canada's Health Care System", in J. Downie and T. Caulfield (eds.) *Canadian Health Law and Policy* (Butterworths: Toronto, 1999).III, 15-38

C.M. Flood and T. Archibald, "The Illegality of Private Health Care in Canada" (2001) 164(6) Can Med Assoc Jnl 825-830.....III, 39-44

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Report of the Auditor General of Canada (1999)
Chapter 29 "Federal Support of Health Care Delivery"

C. David Naylor, "Health Care in Canada: Incrementalism Under Fiscal Duress" (1999) 18: 3 Health Affairs 9.

Canada Health Action: Building On the Legacy: Final Report of the National Forum on Health (National Forum on Health: 1997).

Oct. 3rd **Chapter Four**

RATIONING HEALTH CARE IN CANADA

Colleen M. Flood, Mark Stabile, Carolyn Hughes Tuohy, "Why the Source of Money Matters: International Comparisons Of Public And Private Spending on Health Care".....IV, 1-9

Eldridge et al. v. Attorney General of British Columbia et al., (1997), 151 DLR (4th) 577.....IV, 10-45

Cameron v. Nova Scotia (Attorney General), [1999] 177 DLR (4th) 611.....IV, 46-88

C. Abraham, "Tenacious woman scores medical victory," *Globe and Mail*, Fri., Aug. 27, 1999.....IV, 89-91

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| <i>Auton (Guardian ad litem of) v. British Columbia (Minister of Health)</i> , [2000] B.C.J. No. 1547..... | IV, 92-100 |
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Oct. 10th Chapter Five

ABORIGINAL HEALTH & THE DETERMINANTS OF HEALTH

The Problems:

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| John O'Neil, Laurel Lemchuk-Favel, Yvon Allard, and Brian Postl, "Community Healing and Aboriginal Self-Government", in H. H. Hylton (ed.), <i>Aboriginal Self-Government in Canada: Current Trends and Issues</i> , 2 nd ed (Saskatoon: Purich Publishing Inc., 1999) 130-156..... | V, 1-13 |
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Impediments:

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| "The Context of Delivery of Health Services to Status Indians and Inuit by Medical Services Branch," Program Transfer and Policy Development, Medical Services Branch (Report), September 6, 1988..... | V, 14-25 |
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Suggested Solutions:

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| "Strengthening Aboriginal Governance", in <i>Gathering Strength: Canada's Aboriginal Action Plan</i> (Ottawa: Ministry of Indian Affairs and Northern Development, 1997)..... | V, 26-39 |
| "The Treaty Right to Comprehensive Health Care," <i>First Nations Health News</i> | V, 40-41 |
| "Native leaders fear results of health transfer," <i>Wawatay News</i> , September 23, 1999. | V, 42-43 |

Supplementary Readings

Bill 43, *An Act respecting the regulation of Health Professions*, S.O. 1991, c. 18, s. 35.

Bill 56, *An Act respecting the regulation of Midwifery*, S.O. 1991, c.31, s. 8.

Bill 119, *An Act to prevent the Provision of Tobacco to Young Persons*, S.O. 1994, c. 10, s.13.

VOLUME TWO

Oct. 17th Chapter Six

REGULATION OF THE PRICE, COSTS, AND COST-EFFECTIVENESS OF DRUGS

R. G. Elgie, "Regulating Prices of Patented Pharmaceuticals in Canada: The Patented Medicine Prices Review Board" (May 1996) 13: 2 Food, Drug, Cosmetic and Medical Device Law Digest 80--83. VI, 1-9 ↗

Bristol-Myers Squibb Canada Inc. v. Canadian Coordinating Office for Health Technology Assessment [1998] O.J. No. 1404. VI, 10-20

M. Shuchman, "Drug firm threatens suit over M.D.'s product review," *Globe and Mail*, Wed., Nov. 17, 1999. VI, 21-23

S. Jacobzone, "Pharmaceutical Policies in OECD Countries: Reconciling Social and Industrial Goals (OECD Report: 2000)..... VI, 24-47

Oct. 24th Chapter Seven

REGULATING THE LOCATION, NUMBER AND INCOME OF DOCTORS

Waldman v. British Columbia (Medical Services Commission) (1997), 150 D.L.R. (4th) 405. VII, 1-43

Rombaut v. New Brunswick (Minister of Health and Community Services) [2000] N.B.J. No. 126.....VII, 44-54

D. Orentlicher, "Paying Physicians More to Do Less: Financial Incentives to Limit Care" (1996) 30 University of Richmond Law Review 155. VII, 55-88

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G. L. Stoddart and M. L. Barer, "Will increasing medical school enrolment solve Canada's physician supply problems?" (1999) 161 (8) Canadian Medical Association J. 983

J. Ibbitson, "Big changes proposed for family doctors," *Globe and Mail*, Wed., Dec. 22, 1999

M. Mills, "Canada's health-care crisis: we may already have the cure," *Globe and Mail*, Tues., Jan., 18, 2000

L. Priest, "Busy M.D.'s rake in huge OHIP fees," *Globe and Mail*, Tues., March 28, 2000.

G. L. Stoddart, M. L. Barer, R. G. Evans, V. Bhatia, "Why Not User Charges? The Real Issues" The Premier's Council on Health, Well-being and Social Justice, September, 1993.

C. M. Flood, "Will Supplementary Private Insurance Reduce Waiting Lists?" *Canadian Health Facilities Law Guide*, September 24, 1996

S. M. Hutton, "Physician Freedom of Contract in Ontario: An Economic Justification for the Ban on Extra-Billing with Some Recommendations for Structural Change" (1989) 47 *University of Toronto Law Review* (Supp.) 780

M.L. Barer and L. Wood, "Common Problems, Different Solutions: Learning from International Approaches to Improving Medical Services Access for Underserved Populations" (1997), 20:2 *Dalhousie Law Journal* 321

Oct. 31st **Chapter Eight**

HEALTH CARE REFORM: DEVOLUTION, DEINSTITUTIONALIZATION AND THE SHIFT TO HOME CARE

J. Lomas, "The Evolution of Devolution: What does the Community Want?" in D. Drache and T. Sullivan, (eds.), *Health Reform: Public Success, Private Failure* (Routledge: London, 1999) 166-185.....VII, 1-10

Colleen M. Flood, "Moving Medicare Home", forthcoming in T. Caulfield (ed), *Health Reform in Canada*.....VII, 11-28

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Pembroke Civic Hospital v. Ontario (Health Services Restructuring Commission) [1997] O.J. No. 3142 (No. 394/97)

. Lomas, J. Woods, & G. Veenstra, "Devolving Authority for Health Care in Canada's Provinces: 1. An Introduction to the Issues" (1997) 156: 3 *Can. Med. Assoc. Jnl.* 317--377

C. M. Flood, "Accountability of Health Service

Purchasers: Comparing Internal Markets and Managed Competition Reform Models” (1997) 20: 2 Dalhousie Law Journal 470, 492-507

Health Services Restructuring Commission, News Release -- Health Services Restructuring Commission Releases Metro Toronto Plans, March 6, 1997

Janet E. Fast et al., *Conceptualizing and Operationalizing the Costs of Informal Elder Care* (Final Technical Report to the National Health Research Development Program (NHRDP) March 17, 1997), p. 1-15

J. Coutts, "Health-care cuts hit women hardest, economists told", *The Toronto Globe and Mail*, Monday, August 25, 1997, p. A5

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Nov. 14th **Chapter Nine**

TO THE MARKET!: MANAGED CARE, MANAGED COMPETITION, AND INTERNAL MARKETS

A. C. Enthoven, “The History and Principles of Managed Competition” (1993 Supp.) 12 Health Affairs 24.IX, 1-25

F. T. Schut and H. E. G. M. Hermans, “Managed Competition Reforms in the Netherlands and its Lessons for Canada” (1997) 20: 2 Dalhousie Law Journal 437--469.IX, 26-42

J. L. Grand, “Competition, Cooperation, Or Control? Tales From the British National Health Service” (1999) 18: 3 Health Affairs 27.....IX, 43-49

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D. Mechanic, “Managed Care: Rhetoric and Realities” (1996) 31(2) Inquiry 124.

P. Allen, “Contracts in the National Health Service Internal Market” (1995) 58 (3) Modern Law Review Limited 321.

Nov. 21st **Chapter 10**

**HEALTH CARE REFORM: PRIVATIZATION, EXTRA-BILLING,
CONTRACTING OUT AND ALBERTA'S BILL 11**

Bill 11, *The Health Care Protection Act*, S.A. 2000, c. H-3.3.....X, 1-23

Carolyn Hughes Tuohy, Colleen M. Flood, and Mark Stabile,
"How Does Private Finance Affect Public Health Care Systems?
Marshalling the Evidence from OECD Nations"
(working paper submitted to the Jnl of Health
Politics Policy and Law, April 2001).....X, 24-47

S. Rathgeb Smith and M. Lipsky, "Privatization in
Health and Human Services: A Critique" (1992)
17 (2) Jnl. of Health Politics, Policy and Law 233X, 48-58

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S. M. Hutton, "Physician Freedom of Contract in Ontario:
An Economic Justification for the Ban on Extra-Billing
with Some Recommendations for Structural Change"
(1989) 47 University of Toronto Law Rev. (Supp.) 780.

G. L. Stoddart, M. L. Barer, R. G. Evans, V. Bhatia, "Why Not User Charges? The Real
Issues" The Premier's Council on Health, Well-being and Social Justice, September,
1993.

C. M. Flood, "Will Supplementary Private Insurance Reduce Waiting Lists?" *Canadian
Health Facilities Law Guide*, September, 1996.

Nov. 28th **Chapter 11**

REGULATING QUALITY & SAFETY

L. McNamara and E. Nelson, "Regulation of Health
Care Professionals", in J. Downie & T. Caulfield (eds.),
Canadian Health Law and Policy (Butterworths:
Toronto, 1999), pp. 51-78.....XI, 1-16

G. R. Baker and P. Norton, "Making Patients Safer! Reducing Error in
Canadian Healthcare", (2001) 2:1 HealthcarePapers 10-33.....XI, 17-38

Dec. 5th

No Assigned Readings: Wrap-up

CLASSES END

